Supreme Court, U.S.
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No. 05-255 AUG 23 2005

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In The

Supreme Court of the United States

ATHAR NIAZ RANA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Given the split within the Fifth Circuit and with the Third Circuit as well as the near total lack of interpretive case law from other Circuits, whether it is proper to charge multiple completed executions of health care fraud in one count.

Given the split among the Circuit Courts of Appeal concerning the value of unpublished opinions, the Petitioner's right to due process, and the importance of a functioning judiciary, whether a Court of Appeals may side step its own precedence by choosing not to publish its opinion.

PARTIES TO THE PROCEEDING

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OPINIONS BELOW

The Fifth Circuit denied Mr. Rana's direct appeal. *U.S. v. Rana*, 129 Fed.Appx. 890, 2005 WL 984220 (5th Cir. 2005) (unpublished opinion). A copy of this opinion is attached at Appendix App. 1.

JURISDICTION

The Court of Appeal's judgment was entered on April 28, 2005. A timely petition for rehearing was denied on May 25, 2005. This Court has jurisdiction to issue a writ of certiorari in this case under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION

Article I, Section 9 of the United States Constitution [*Ex Post Facto* Clause] states:

> "No Bill of Attainder or ex post facto Law shall be passed.'

The Sixth Amendment of the United States Constitution states:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Fifth Amendment of the United States Constitution [Due Process Clause] states:

> Nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

Dr. Athar Niaz Rana was charged in a one count indictment for health care fraud on January 21, 2004. The Government superceded the indictment (hereinafter both are referred to as "indictment") on March 14, 2004, changing only the starting date for the offense from January 1998 to September 1, 1997. The Superceding Indictment charged Rana with violating 18 U.S.C. §1347(2).[1] After a jury trial, Rana was convicted. Having remained in custody from the date of his arrest, he was sentenced to time served (six months and four days). Dr. Rana appealed his conviction. On April 28, 2005, a Panel of the Fifth Circuit affirmed Rana's conviction, and vacated his sentence in light of *U.S. v. Booker*, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). *See* Appendix at App. 1. Although the case was not designated for publication, the Eleventh Circuit Court of Appeals has cited the *Rana* case regarding its vacatur of his sentence. *See U.S. v. King*, 414 F.3d 1329 (11th Cir. 2005).

Dr. Rana was involved in two healthcare businesses at different times and at different locations in the City of Odessa, Texas. In September 1997, he owned the Coliseum Diagnostic Clinic, an emergency care facility manned by other doctors. Dr. Rana also owned the Odessa Allergy Clinic, where he worked providing diagnosis and treatment to individuals with allergies. His indictment is extremely general, it describes a scheme to defraud as

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[1] "Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice – . . . (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both." 18 U.S.C. §1347.